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IN THE

Supreme Court of the United States
OCTOBER TERM, 1981

H.M. "MIKE" CANNON,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent

On Petition for a Writ of Certiorari to
The Supreme Court of Louisiana

OPPOSITION TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether petitioner's conviction for Public Salary Extortion under Louisiana Revised Statutes 14:136(1) violated his constitutional rights guaranteed by the First, Fifth, and Fourteenth Amendments of the United States Constitution as a result of the statute's alleged vagueness and overbreadth.

2. Whether the retrial of the petitioner constituted a violation of the Double Jeopardy Provision contained in the Fifth Amendment of the United States Constitution. A mistrial was declared during the first trial due to sequestered witnesses learning that a state's witness had been arrested for perjury.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

CONSTITUTIONAL PROVISIONS AND STATUTES 2

STATEMENT OF THE CASE 4

SUMMARY OF ARGUMENT:

I. Louisiana Revised Statute 14:136 is constitutional 7

II. The retrial of petitioner did not constitute double jeopardy 8

ARGUMENT:

I. Alleged unconstitutionality of Louisiana Revised Statute 14:136, Public Salary Extortion 9

II. Alleged violation of the constitutional prohibition against double jeopardy 15

CONCLUSION 20

CERTIFICATE OF SERVICE 21

TABLE OF AUTHORITIES

La.R.S. 14:136(1) 1,2,4,6

Constitution of the United States, First Amendment 3,7

Constitution of the United States, Fifth Amendment 3

Constitution of the United States, Fourteenth Amendment 3

State v. Cannon, 383 So.2d 389 (La. 1980) 5,6,19

La.R.S. 14:136 7,9,10,14,20

Connally v. General Construction Co., 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1925) 9

Boyce Motor Lines, Inc. v. United States, 342 U.S. 337, 72 S.Ct. 329, 96 L.Ed. 369 (1951) 9,10

United States v. Petrillo, 332 U.S. 1, 67 S.Ct. 1538, 91 L.Ed. 1877 (1946) 9

Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1956) 9,10

United States v. Harris, 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed.2d 989 (1953) 10

Huerta v. Flood, 103 Arizona 608, 447 P.2nd 886 (1968) .. 12

La.R.S. 14:67 14

La,R.S. 42:727(J) 14

Lee v. United States, 97 S.Ct. 2141 (1977) 16,19

United States v. Dinitz, 96 S.Ct. 1075 (1976) 16,17

La.R.S. 14:123 17

United States v. Jone, 400 U.S. 470, 476, 91 S.Ct. 547, 552, 27 L.Ed.2d 543 (1971) 19

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Respondent, the State of Louisiana, respectfully opposes the petition for a writ of certiorari, and, in answer to the petition contends that the trial court was correct in upholding the constitutionality of Louisiana Revised Statutes 14:136(1) and, that the Louisiana State Supreme Court properly affirmed the trial court's decision. The State therefore prays that this Honorable Court refuse to grant the writ of certiorari requested by petitioner.

CONSTITUTIONAL PROVISIONS AND STATUTES

I.

Louisiana Revised Statutes 14:136(1) Public Salary Extortion

Public salary extortion is committed when any person shall:

(1) Solicit or receive, or attempt to solicit or receive, either directly or indirectly, the payment of any money or other thing of value from any public officer or public employee to himself or any other person or political organization, through any means or form whatsoever and for any purpose whatsoever, when such payment is obtained or solicited upon suggestion or threat that the failure to make such payment shall result in the loss or impairment of value to such officer or employee of his office or employment, or when such payment shall be a reward or remuneration for securing such office or employment; and proof that such payments were collected from or paid by such officers or employees on a uniform or progressive percentage or amount basis, shall be presumptive evidence that payments were made under duress or upon the considerations set forth hereinbefore; or

(2) Solicit or receive or attempt to solicit or receive, either directly or indirectly, the contribution of any money or other thing of value for any general, primary or special election or for any other political purpose, from any person holding any office or employment for remuneration or profit, including those persons who work on a commission basis, with the state, who receive a remuneration of two hundred dollars per months or less from such employment; provided that this Subdivision shall not apply where the person solicited or whose con-

tribution was received was an elective public officer or a candidate for any elective public office.

Whoever commits the crime of public salary extortion shall be imprisoned for not more than five years with or without hard labor or shall be fined not more than five thousand dollars or both.

II.

Constitution of the United States, First Amendment.

III.

Constitution of the United States, Fifth Amendment.

IV.

Constitution of the United States, Fourteenth Amendment.

STATEMENT OF THE CASE

On or about January 28, 1979, an article by reporter Gibbs Adams appeared in the Baton Rouge Sunday Advocate. The article dealt with the reporter's findings concerning operation of the Clerk of Court's Office in East Baton Rouge Parish. Specifically, the article indicated that the Clerk of Court, Mike Cannon, was using public funds to finance his re-election campaign. His scheme, according to the newspaper, was to indicate to certain of his employees that if they would contribute certain amounts to his re-election campaign, he would make up their contribution through a salary increase. (The salary increase would not become a reality to the employees until the second year of its implementation.)

After subsequent investigation by the District Attorney's Office, a grand jury indicted Mike Cannon with public salary deduction (La.R.S.14:135) and public salary extortion (La.R.S. 14:136(1)). These original grand jury indictments were quashed by the Louisiana State Supreme Court on a technicality involving the composition (one member) of the grand jury.

After a subsequent grand jury indictment on the same offenses, the matter was tried September 20, 1979. That trial ended in a mistrial at the petitioner's motion. Petitioner claimed that the trial witnesses were intimidated when they learned of the arrest of one of the prosecution's witnesses for perjury. The trial judge sustained petitioner's motion and the trial was reset. Petitioner then applied for a writ of certiorari to the Louisiana State Supreme Court contending that his retrial would constitute double jeopardy. That honorable court refused to make such a finding and ruled that the November trial date should remain firm.

On Friday, November 16, 1979, petitioner was tried a second time. He was found guilty by the trial judge of public salary extortion, and found not guilty of public salary deduction. The Louisiana State Supreme Court excellently summarized the evidence adduced against the petitioner at trial when considering this case on earlier writs of certiorari in

State v. Cannon, 383 So.2d 389 (La. 1980), at page 392, wherein Justice Watson stated:

> "(2) Among the seven witnesses called by the State were six employees of defendant's office. None of the State's witnesses testified to overt threats by defendant. However, defendant did ask the supervisors in his office to contribute a full month's salary and the assistants to contribute a half month's salary, promising that those who helped him would be helped in turn. When one employee asked what he meant, he replied . . . through evaluations when evaluation time came.' (Tr. 89.) According to another witness: 'He said that he would give us a raise to make up any contribution to the pledge.' (Tr. 133.) This employee was told to speak to others and '. . . remind them that evaluation time was coming up and it would be appreciated.' (Tr. 133-134.) The witness said: 'I was to report before January 15 which employees did or did not pledge.' (Tr. 160.)
>
> By mentioning the upcoming quarterly evaluations and their concomitant raises when discussing campaign contributions, Cannon gave the clear impression that there would be no raises unless the recommended month's salary or halfmonth's salary was contributed to the campaign fund. The words were spoken in the context of an employer-employee relationship and the reasonable conclusion is that they were intended to intimidate. Although some witnesses testified that they felt no compulsion to contribute, other employees said they assumed that if they contributed they would receive raises."

Sentencing was stayed by the trial judge while petitioner was allowed to apply for the writs of certiorari mentioned above. The Louisiana State Supreme Court granted these writs to consider the issues alleged, namely: the unconstitu-

tionality of the statute, violation of double jeopardy, and the insufficiency of evidence to convict. In a lengthy opinion, that honorable court affirmed petitioner's conviction. *State v. Cannon,* 383 So.2d 389 (La. 1980) rehearing denied.

Mr. Cannon was then sentenced to pay a one thousand dollar ($1,000.00) fine, and was given a five (5) month suspended sentence with two (2) years active supervised probation. At the sentencing hearing, the petitioner filed a motion for a new trial on the grounds of double jeopardy based on newly discovered evidence. This motion was denied by the trial court.

Finally, petitioner filed an original appeal with the Louisiana State Supreme Court again presenting both the issue of double jeopardy, and, that of the unconstitutionality of La.R.S. 14:136(1). That honorable court affirmed both the conviction and sentence without written opinion.

SUMMARY OF ARGUMENT

I. LOUISIANA REVISED STATUTES 14:136 IS CONSTITUTIONAL

The State of Louisiana submits to this Honorable Court that the Public Salary Extortion Statute in question is neither unconstitutionally vague nor overbroad. We also submit that petitioner's conviction under the statute did not constitute a denial of due process of law.

La.R.S. 14:136 is not a statute using terms so vague that men of common intelligence must guess as to its meaning and differ as to its application. It gives adequate warning of the conduct proscribed and also marks boundaries sufficiently distinct for judges and juries to fairly administer the law. The record in this case shows that petitioner himself clearly knew that his conduct was at odds with the law as he sought to "white wash" and "cover up" his actions of soliciting campaign contributions while tying them in to employee quarterly job evaluations. Petitioner was not denied due process of law.

The State also asserts that this criminal statute is not so overbroad as to impinge upon protected First Amendment freedoms. Petitioner alleges that certain words and phrases in the law are overly broad. These are: "suggestion", "other thing of value", and "any other political organization." The State contends that all the above-mentioned words, when considered in context with the rest of the statute, possess a definite, understood meaning in their application. We also contend that the statute gives a person of ordinary intelligence fair notice of what conduct is criminal. To reiterate, the petitioner in this case obviously knew that his conduct was in violation of this allegedly overbroad statute.

The petitioner also places reliance on an Arizona statute which was found to be unconstitutional by the Arizona Supreme Court. That statute makes it a crime just to *ask* an employee for a contribution. This reliance is misplaced because the Public Salary Extortion Statute in Louisiana at issue in this case is distinguishable. The soliciting for contributions from the employees must also be accompanied by the

suggestion or threat that the employee's job security is tied to the contribution.

We therefore submit that a reasonable reading of the statute will prove that it does not overly restrict the activities of Louisiana citizens to the extent that cherished First Amendment rights are infringed upon.

II. THE RETRIAL OF PETITIONER DID NOT CONSTITUTE DOUBLE JEOPARDY.

Petitioner contends that the arrest of a state witness for perjury during a lunch break of his first trial was a result of bad faith action on the part of the district attorney's office and as such, any retrial on the same charges would violate the constitutional prohibition against double jeopardy.

The State would submit to this Honorable Court that, as a factual matter, the actions of the assistant district attorney who accompanied the officers in order to direct them to the witness did not constitute bad faith. The Louisiana State Supreme Court in considering this same factual question found that at most, the prosecutor was guilty of mere negligence. The record shows that this arrest was not the volatile public display as petitioner suggests. Also, the defense witnesses who testified on the motion for mistrial indicated that they merely heard about the arrest rather than actually seeing it. The witness in question who was arrested admitted to lying on the stand earlier during a grand jury hearing. Perjury in Louisiana is a felony. We submit that it was not his intention to bring about a mistrial or to intimidate other witnesses by this arrest. In fact, the State strenuously argued against the motion for mistrial.

The State of Louisiana would submit to this Honorable Court that the prosecutor was not acting in bad faith in having a witness arrested for perjury. We further contend that according to the decisions of this Honorable Court, the prosecutor's actions in this case were not of the type which bar a retrial of a defendant on grounds of double jeopardy.

ARGUMENT

I.

ALLEGED UNCONSTITUTIONALITY OF LOUISIANA REVISED STATUTE 14:136, PUBLIC SALARY EXTORTION.

The petitioner here complains that the statute under which he was convicted is unconstitutional in that it suffers from vagueness and overbreadth. The State submits that the statute does not allow a public official to solicit campaign contributions from his employees under suggestion or threat that some aspect of their job or job security is directly connected to such a contribution. The statute fairly puts any public official on notice that he cannot solicit campaign contributions from his employees if he ties such contributions in to the employee's jobs. Furthermore, only such solicitations made under suggestion or a threat of impairment to the job or to the job security are proscribed by the statute. Solicitations which do not use public employment or any aspect of public employment as leverage to force an employee to contribute are not proscribed by this statute. The statute is not overbroad.

VAGUENESS

The rule is well settled that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess as to its meaning and differ as to its application lacks the first essential of due process of law. *Connally v. General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1925). However, no more than a reasonable degree of certainty can be demanded. All that can be required is that the language, when measuring by common understanding and practices, give adequate warning of the conduct proscribed and mark boundaries sufficiently distinct for judges and juries to *fairly* administer the law. *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 72 S.Ct. 329, 96 L.Ed. 369 (1951); *United States v. Petrillo*, 332 U.S. 1, 67 S.Ct. 1538, 91 L.Ed. 1877 (1946); *Roth v. United States*, 354 U.S.

476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1956). In *Roth v. United States,* supra, the court held that a statute was not vague and outlined the test:

> "Lack of precision in a criminal statute is not itself offensive to the requirements of due process; the Constitution does not require impossible standards, and all that is necessary is that the language covers sufficiently definite warnings as to the proscribed conduct when measured by common understanding and practices."

Boyce Motor Lines, Inc. v. United States, supra, further reinforces this point of characterizing the vagueness doctrine as embracing the notions of fairness and flexibility:

> "Few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations and the practical necessities of discharging the business of government inevitably limits the specificity with which legislators can spell out prohibitions."

See also, *Roth v. United States,* supra, and *United States v. Harris,* 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed.2d 989 (1953).

The State maintains that, if the trier of fact finds that an employer uses an employee's job as leverage to solicit campaign contributions, he comes within the ambit of La.R.S. 14:136. An employer cannot even suggest to his employees that their jobs are connected with their contributions. In the instant case, several employees testified that the petitioner requested help with his political campaign, indicating specific amounts which would be a "super effort" or a "fair share." He then asked the supervisors to go back to their subordinates, mention his "request", and mention as well the fact that quarterly evaluations were coming up. The petitioner specifically tied campaign contributions to job evaluations. Such conduct clearly comes within the ambit of the statute. (Tr. p. 30.)

Furthermore, the petitioner was well aware of the fact that his conduct came within the ambit of the statute. When he

was contacted by the reporter, Gibbs Adams, regarding his salary increases, he had a meeting with his supervisors asking them not to mention the campaign contributions. After the newspaper article came out, he had another meeting with his supervisors requesting that they tell everybody that the contributions were "voluntary" and that they not tell anybody about the fact that he had requested the contributions. He further mentioned that he did not want his employees talking to the district attorney's office. The fact that the petitioner, before he was indicted for anything, requested that his employees not tell anybody what he had done, indicates that the petitioner was well aware of the fact that he had done something wrong. In fact, his conduct toward the newspaper and toward the district attorney's office during that initial period was akin to a man trying to cover up what he had done. It was never conduct one associates with an innocent man who feels he has nothing to hide.

In conclusion, the statute in question zeroes in on the relationship between a public official and his employees. The Louisiana legislature recognized that public employees are particularly vulnerable to the campaign solicitation of their politician-boss. Even though Hatch Act proscription does not apply to City Parish employees, the legislature deemed it necessary to protect non-civil service employees at least to the extent that their salaries could not be used to finance their employer's political campaign. Because the employer-employee relationship in public service jobs is so vulnerable to coercion, the legislature felt that campaign solicitations should be regarded particularly carefully. If those solicitations were in any way connected with the employment, then the legislature sought to make such solicitations unlawful. In this instance, the solicitations were directly connected with employment in that specific numbers, i.e. one month's salary or one half month's salary, were suggested by the petitioner, and, were suggested in virtually the same breath as the reminder that quarterly job evaluations were coming up. Certainly, a bad quarterly evaluation is an impairment to employment, as well as to the security of employment. A bad evaluation determines whether or not a person gets a raise or

is promoted. Too many bad evaluations can very logically lead to dismissal. No one specifically testified that he or she was so threatened by the petitioner, but the suggestion was there. The connection between the contribution and the job was explicitly made by the defendant, thus making his conduct unlawful.

OVERBREADTH

The defendant bases his "overbreadth argument" on the treatment by the Arizona Supreme Court of a statute prohibiting political contributions in Arizona. (*Huerta v. Flood*, 103 Arizona 608, 447 P.2nd 886 (1969). The Arizona revised statute reads:

> "No public officer or public employee of the State, a State agency or of a political subdivision shall directly or indirectly command, ask, coerce, or attempt to coerce any officer or employee of the agency, department, division for which he had direct supervision to pay, lend or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency or person for political purposes."

The petitioner's reliance on the Arizona court decision, and its treatment of this statute, is misplaced. The Arizona statute says that no one can ask an employee for a political contribution. The Louisiana statute does not prohibit a boss from asking an employee for a political contribution. The Louisiana statute prohibits a boss asking an employee for a political contribution *if* he uses the employee's job as leverage for obtaining that contribution. The Arizona statute forbids the asking. The Louisiana statute forbids asking along with the suggestion that employment may suffer if the request is not granted. As the Arizona Supreme Court said, "It's an old cliché that 'there is no harm in asking'." *Huerta* at 869. The Louisiana statute does not forbid the mere asking, nor can the petitioner claim that he merely asked. He called his supervisors into his office and requested assistance in his political election. He then showed his supervisors a

chart with a break down of the amount of funds he expected to be given by them and their subordinates. He mentioned that they should make it clear to their subordinates that the quarterly evaluations were coming up. The inference that the contributions were expected, and, that they were to be tied to the security of the employee's jobs was so strong under that context that the petitioner himself realized that he had better call his supervisors in after the newspaper reporters' initial interrogation and explain that the political pledges were to be on a "voluntary" basis. The petitioner himself realized the atmosphere he was creating with his supervisors. He sought hurriedly to white-wash that atmosphere when he realized that the media was looking into the situation.

The gravaman of Public Salary Extortion is the threatening or suggesting of a threatening situation to a public employee with his job for purposes of extracting some payment or something of value from that public officer or employee. The petitioner suggests that the statute is overly broad for several reasons.

First, the petitioner says that the word "suggestion" is overly broad. However, the definition of the word suggestion, as quoted in petitioner's brief is clear and subject to reasonable determination by an average man. The petitioner suggested that his subordinates' jobs were intermingled with their political contributions to his campaign. The suggestion was so clear and obvious that, as noted above, the petitioner himself labored to correct it prior to his indictment. The trial court found that the petitioner had definitely:

> "cause(ed) to be present to the mind as an object of thought, an idea to be acted upon, a question or problem to be solved." (Oxford English Dictionary, Oxford University Press, 1971.)

The suggestion of the proper course of action for the employees called in was certainly very clear. At least, it was clear enough to be transmitted to the subordinates of the supervisors who testified.

"Other thing of value" is another phrase of which the petitioner complains. Actually, it is much akin to the "anything of value" found in La.R.S. 14:67, theft. The State submits that triers of fact have little difficulty in considering such phraseology in connection with theft. Thus, they should have little difficulty treating it in conjunction with Public Salary Extortion.

Next, the petitioner maintains that the statute is overly broad because it prohibits activities other than partisan politics. Specifically, he complains about "any political organization . . . for any purpose whatsoever." Classified public employees in the State of Louisiana are covered by La.R.S. 42:727(J) which "prohibits participation of any employee of the state agencies from engaging in political activity except as to their rights to freely express their views as citizens and cast their votes . . ." Partisan politics is nowhere mentioned. Classified state employees are allowed only to express their political views and to vote. Any other political activity is forbidden. The State would also seek to point out that La.R.S. 14:136 does not prohibit the employee from expressing his political views or even from contributing to his employer's political campaign. La.R.S. 14:136 prohibits the employer from soliciting such a contribution coupled with a threat or suggestion etc., . . . The rights of non-classified employees are not infringed by this statute except to the extent that they are free from "suggestions" and "threats" from their employers or other persons who would have the power to threaten them. Finally, the statute prohibits "any person" from extorting or attempting to extort something of value from a public employee through threats to his job. The reasonable construction of this statute would leave the reader to assume that Public Salary Extortion is only at issue when a person has the power to impair a public official or employee's job or the security of his job. Furthermore, the reasonable reading of the Public Salary Extortion Act and the constant reference to "payments" should lead a reasonable man to believe that a public employee was being requested to give up part of his salary or an equivalent of his salary in return for keeping his job or being able to have the

opportunity to advance in his job. The petitioner hypothesizes a situation in his brief where an irate member of the public demands that a public official either do his duty, (fix potholes in the street), or the irate citizen will turn him out of office. This hypothesis is inappropriate to the statute. First, threatening someone to do their duty is not a threat as foreseen by the statute. No salary or an equivalent of salary is being coerced out of the public official. Secondly, no public official would pay an irate citizen part of his salary or the equivalent of his salary in order to keep from being turned out of office (or if he did, he would come under the statute proscribing vote buying).

In conclusion, the State of Louisiana submits that a reasonable reading of the statute will lead this Honorable Court to the conclusion that it is explicit in its restrictions, and that it does not overly restrict the activities of Louisiana's citizens. Rather, it protects helpless public employees from being forced to pay money to keep their jobs secure.

II.

ALLEGED VIOLATION OF THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY.

Petitioner, H.M. "Mike" Cannon, waived his right to trial by jury electing instead to be tried before a judge. The trial commenced on September 20, 1979, with the State introducing the testimonial evidence of Larry Owens, Reine Landry, and Angie Wilson. Then, Miss Judith Redden was called to the stand to testify of behalf of the State. After Miss Redden's testimony at trial was contrary to that anticipated by the State, the State pled surprise and requested permission to cross-examine her on that basis. (Tr. p. 72.) When Miss Redden was questioned as to whether or not the defendant had expected her to give him money, she responded negatively. (Tr. p. 72.) The State reminded Miss Redden that she was under oath and allowed her to view the grand jury transcript which reflected that she had made such a statement. (Tr. p. 73.) Again, Miss Redden denied making the statement and responded that she did not know

how it got in there. (Tr. pp. 74, 75.) By her own testimony Miss Redden established that she had testified two or three times before the grand jury investigating the Cannon matter. (Tr. pp. 85, 90.) Additionally, she admitted lying during her first grand jury appearance and stated that she later rehabilitated herself. (Tr. pp. 90, 91.) Prior to her testimony of September 20, 1979, Miss Redden was informed that she should tell the truth at trial and her failure to do so would result in an indictment for perjury. (Tr. p. 92.)

Subsequently, the State called Mr. Jack Ambrose, Gretchen Black, and Euther Hughes as witnesses at this trial. After these witnesses testified, the Court recessed for lunch. During this recess, Mr. David Bourland, one of the three prosecutors in this case, provided information in the form of an affidavit which provided the basis for the arrest warrant issued for Miss Judith Redden charging her with perjury. (Tr. p. 174.) When two plain clothes deputies from the Sheriff's Office arrived to arrest Miss Redden for perjury, Assistant District Attorney Mr. Bourland did go with the deputies to show them Miss Redden. He also informed Miss Redden that she was being arrested for perjury. (Tr. pp. 164, 174, 175.)

After the petitioner was informed that Miss Redden had been arrested, he moved to quash the indictment and for a mistrial. The trial court denied the motion to quash but granted the motion for mistrial after hearing the testimony of five witnesses.

This Honorable Court in *Lee v. United States,* 97 S.Ct. 2141 (1977), discussed the issue of double jeopardy. In *Lee,* the defendant moved for a mistrial on the grounds that the bill of information failed to charge the requisite specific intent necessary for the offense of theft. After the trial court granted the motion dismissal, the defendant argued that such dismissal barred reprosecution for the same offense. The court in *Lee* reiterated the court's position in *United States v. Dinitz,* 96 S.Ct. 1075 (1976), and found that:

> "Double jeopardy does protect a defendant against governmental actions intended to provoke mistrial requests and thereby to subject defendants to the

> substantial burdens imposed by multiple prosecutions. It bars retrials where 'bad faith' conduct by judge or prosecutor, threats the 'harrassment of any accused by succcessive prosecutions or declaration of a mistrial so as to afford the prosecution a more favorable opportunity to convict the defendant'." *(Dinitz,* at p. 1081.)

Clearly, the transcript in the instant matter does not reflect that the State's conduct was intended to induce the petitioner to seek a mistrial in order that the State could obtain a more favorable position at a subsequent trial. In fact, the testimony provided by virtually all witnesses was strong enough to prove the petitioner's guilt beyond a reasonable doubt. The State submits that its conduct was not the type of conduct which constitutes prosecutorial overreaching.

Under La.R.S. 14:123, perjury, is defined as:

> "The intentional making of a false written or oral statement in, or for use in, a judicial proceeding, or any proceeding before a board or official, wherein such board or official is authorized to take testimony. In order to constitute perjury the false statement must be made under sanction of an oath or an equivalent affirmation, and must relate to matter material to the issue or question in controversy.
>
> It is a necessary element of the offense that the accused knew the statement to be false; but an unqualified statement of that which one does not know or definitely believe to be true is equivalent to a statement of that which he knows to be false."

Conviction for this offense exposes the defendant to a possible prison term at hard labor. Thus, the offense is a felony. It is the position of the State that they have a duty to the people of Louisiana to insure that crimes will not go unpunished. Therefore, Mr. Bourland believed that he was duty bound to sign the affidavit charging Miss Redden with

the felony offense that she committed in his presence.

When the Court attempted to ascertain who was present when the arrest occurred and what effect the arrest had on prospective witnesses, Miss Redden initially stated that she was sitting by one witness at the time of her arrest. (Tr. p. 170.) Miss Loretta Henry stated that it "all happened kind of fast; all of a sudden I just see Judy coming out of the courtroom kind of like a couple of people behind her before I realized what was happening. The newsmen are all rushing in the elevator and the door closed and I realized she'd gotten arrested." (Tr. p. 144.) As Miss Redden was, in fact, arrested while she was sitting on a bench outside of the courtroom, Miss Henry's testimony supports the State's position that the arrest was not a public display, as her testimony demonstrates that not only did she *not* see the arrest, but was not even aware how and when the arrest occurred. Likewise, Kathy Broussard and Janice Davis, both stated that they merely heard that Miss Redden had been arrested. (Tr. p.148, 158.) Moreover, all witnesses testified that they would testify truthfully at a subsequent trial despite what they saw or heard at this September 20th trial. (Tr. pp. 146, 151, 157, 160.)

The State respectfully submits that if it intended to use the arrest of Miss Redden to intimidate the other witnesses, then this purpose would have been better accomplished by such witnesses viewing the arrest. Of course, the State did not intend such consequences which is why all witnesses merely *heard* about the arrest instead of viewing it.

There is no evidence whatsoever in the record to support the contention that the State acted in bad faith or had any reason to abort the trial in order that it could reprosecute this case. In fact, the record reflects that the State was opposed to the mistrial and sought to elicit responses from the witnesses which would establish that they would testify truthfully despite what they had heard concerning Miss Redden's arrest. The Louisiana State Supreme Court reached the following similiar conclusion after reviewing the record in the case:

"(12) There is no evidence that the State deliber-

ately attempted to abort the trial. The State opposed defendant's motion for mistrial and sought to elicit testimony from defense witnesses that they would tell the truth despite Ms. Redden's arrest (Tr. 146, 151, 157, 160 (9/20/79).) The record does not reveal that the State was losing its case and provoked a mistrial to gain an opportunity to begin anew. The prosecutor exhibited no bad faith; the most that can be said is that he was negligent.

Ms. Redden testified that she was arrested while sitting outside the courtroom when other witnesses were in the area. (Tr. 170, (9/20/79).) Although it would have been possible and preferable for the arrest to have taken place elsewhere, all the witnesses who knew of the incident swore that they would testify truthfully despite what they saw or heard. (Tr. 146, 151, 157, 160 (9/20/79).) While we cannot condone the prosecutor's actions, there is no evidence that he acted in bad faith or that his conduct was so gross or wanton as to warrant the dismissal of these proceedings on the basis of double jeopardy. Because the witnesses all testified that the prosecutor's action would not prevent them from telling the truth, there was no evidence that the action seriously prejudiced defendant." *State v. Cannon,* 383 So.2d at pp. 295-296 (La. 1980).

As the United States Supreme Court in *Lee,* supra, pointed out, the critical question is whether the order contemplates an end to all prosecution of the defendant for the offense charged. A mistrial ruling invariably rests on grounds consistent with reprosecution, citing *United States v. Jone,* 400 U.S. 470, 476, 91 S.Ct. 547, 552, 27 L.Ed.2d 543 (1971). In *Lee,* the Court determined that the rules of double jeopardy would permit retrial after a declaration of mistrial.

CONCLUSION

For the foregoing reasons, the State of Louisiana respectfully contends in this opposition to the petition that the Louisiana Public Salary Extortion Statute, (LA.R.S. 14:136), is neither vague nor overbroad so as to result in a violation of petitioner's rights under the First Amendment or due process principles. His conviction under this statute did not constitute a denial of due process in its application.

We also submit that the retrial of petitioner did not constitute a violation of his right against double jeopardy contained in the Fifth Amendment.

The State of Louisiana prays that this Honoable Court refuse to issue a writ of certiorari in order to review the decision of the Louisiana State Supreme Court in this case as that honorable court correctly decided the issues involved. The petition for a writ of certiorari should be denied

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Opposition to Petition for Certiorari have been served, postage prepaid, to Mr. Steve M. Marks, Attorney for Petitioner, 301 St. Charles Street, Baton Rouge, Louisiana 70802, this_____day of October, 1981.

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